

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

ARIZONA PUBLIC SERVICE COMPANY¹

Employer

and

Case 28-RC-6696

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS LOCAL
UNION #387, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

International Brotherhood of Electrical Workers, Local Union #387, AFL-CIO (Petitioner), seeks an election in a voting group comprised of all full-time and regular part-time Project Inspectors-Electrical (PI-E) employed by Arizona Public Service Company (Employer) in the State of Arizona, excluding all other employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act (Act). The Petitioner currently represents 2,100 employees of the Employer (the Unit), and proposes that the election among the Employer's 23 PI-Es should be a self-determination election pursuant to *Armour & Co.*, 40 NLRB 1333 (1942), and *The Globe Machine & Stamping Co.*, 3 NLRB 297 (1937).³ The current Unit does not contain the classification the Petitioner now seeks to represent. The Employer opposes the inclusion of the remaining 23 PI-Es on the grounds that they are managerial employees not appropriately included in the Unit.

Based upon the reasons more fully set forth below, I find that the remaining 23 PI-Es are not managerial employees because they possess only limited discretion, exercised within the Employer's established limits and within the confines of the Employer's general directions, and that it would be appropriate to include the PI-Es in the Unit, should they choose to be represented by the Petitioner.

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

³ The Petitioner originally proposed the inclusion of 25 PI-Es to the Unit. At hearing, the parties stipulated that two of the proposed Unit members, Jeffrey Tucker (Tucker) and Dave Johnson, Jr. (Johnson), are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the Unit on that basis.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board (the Board). Upon the entire record in this proceeding, I find:

1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. **Jurisdiction:** The parties stipulated, the record establishes, and I find, that the Employer is an Arizona corporation, with offices and places of business located throughout the State of Arizona, and is engaged in the generation, transmission, and distribution of electricity. During the 12-month period ending January 4, 2010, the Employer, in conducting the business operations described above, derived gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from sources outside the State of Arizona. The Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.

3. **Labor Organization Status:** The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act and represents certain employees of the Employer.

4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. By its petition, the Petitioner seeks to add to the existing Unit one job classification of employees employed by the Employer, namely, Project Inspectors-Electrical. The proposed addition would add approximately 23 employees to the Unit.

5. **Unit Finding:** This case presents a single issue, whether the PI-Es petitioned for by the Union are managerial employees. As discussed more fully below, I conclude that the petitioned-for PI-Es are not managerial employees and that they may be appropriately included in the Unit. In this decision, I shall discuss the procedural background in this matter; the record facts concerning the Employer's operations; and a description of the positions in dispute and their respective working conditions. I will then present the case law and the reasoning that supports my conclusions on this issue.

A. Procedural and Representation Background

The Petitioner currently represents approximately 2,100 employees of the Employer, and the parties have entered into a series of collective-bargaining agreements dating back to 1945. The parties stipulated that the Unit currently consists of:

Included: All full-time and regular part-time employees of Arizona Public Service Company in the State of Arizona,

employed by the Employer in the job titles listed in the wage schedule of the party's (sic) collective bargaining agreement, attached as a multi-page document marked as Exhibit "A".

Excluded: All other employees, managerial employees, guards, and supervisors as defined in the Act.

On January 4, 2010, the Petitioner filed a petition in this case seeking to represent the following employees of the Employer:

Included: All regular full time and part time Project Inspector Electrical employed by Arizona Public Service Company.

Excluded: All other employees, including office clerical employees, professional employees, guards and supervisors as defined by the Act.

The petition seeks a self-determination election among this group of employees to determine whether they desire to be represented by the Petitioner as part of the Unit, in which case, the parties stipulated, and I find, based upon the record before me, "an appropriate bargaining unit would consist of the employees in the Unit and all full-time and regular part-time Project-Inspectors Electrical employed by the Employer in the State of Arizona, excluding all other employees, managerial employees, guards and supervisors as defined in the Act."

B. The Employer's Operations and Background

The Employer, Arizona Public Service Company (APS), is an electric utility that transmits and distributes electricity to over a million customers in the State of Arizona. The Employer has seven to ten generating stations, including coal, gas and nuclear, and over 340 electrical substations throughout the State of Arizona.

The PI-Es are situated within the Employer's Energy Delivery Division headed by Vice President Daniel Froetscher. Two steps below Froetscher in the Energy Division hierarchy are the Construction Projects Manager, Michael DeWitt, and the Construction/Maintenance Department Leader, Jerry Levesque. Twelve of the PI-Es whom the Petitioner seeks to include in the Unit work in DeWitt's division, and the other eleven PI-Es work in Levesque's division. DeWitt is in charge of what was referred to as "high voltage" projects (69,000 volts and above). Levesque is in charge of "low voltage" projects (below 69,000 volts).

C. Project Inspectors-Electrical

The Employer created the job classification, Project Inspector-Electrical, in October 2009, to differentiate the PI-Es from the Project Inspectors-Trench & Conduit. Before the PI-E job classification was created, the PI-Es were referred to as "coordinators."

The record indicates that the primary difference between the PI-Es and Project Inspectors-Trench & Conduit is that PI-Es oversee the work of outside contractors, whereas the Project Inspectors-Trench & Conduit direct the activities of the Employer's own crews. On occasion the PI-Es may inspect the work of outside contractors whose employees are members of a different local of the Petitioner.

Most, if not all, PI-Es were previously linemen, electricians or foreman included in the Unit. The job description for PI-Es is the same for PI-Es on both the low-voltage and high-voltage projects. It states that PI-Es serve as the Employer's representative "in the coordination, monitoring, and inspection of projects related to electrical line and substation construction, trenching and conduit installation, and site preparation activities completed on behalf of APS by contractors." PI-Es must possess a high school diploma or equivalent, plus three years experience as a journeyman lineman or electrician. One of the PI-E's primary responsibilities is to "Interpret Engineering drawings, Construction Standards Manual, survey notes, Accident Prevention Manual (APM), Contractor Safety Program, Hazardous Waste Documentation and other drawings." Although PI-Es ensure that outside contractors adhere to specific portions of the contract with the Employer, particularly the scope of work and the schedule for performance, it is the contractor who is responsible for determining how to accomplish the job. If the PI-E disagrees with a contractor about how the work should be done, the PI-E notifies a supervisor. To ensure that contractors adhere to the Employer's APM and safety program, the PI-Es attend the contractors' safety meetings with their employees, referred to as "tailboard" meetings.

PI-Es do not typically receive a copy of the entire contract between the contractor and the Employer for sites they oversee, and they do not attend the management meetings to make sure their projects are on budget. The record does not indicate that PI-Es are informed if their projects are over, under, or on budget. The PI-E receives only the portion or portions of the contract between the Employer and contractor that are relevant to the PI-E's duties for that particular job, which generally includes the scope of work, the specifications, blueprints and schedule. PI-Es are not involved in the contract negotiations, contract drafting, or contract scheduling.

Low voltage PI-Es fill out an evaluation form on the contractor after the work is finished. The form allows PI-Es to rate a contractor on ten performance areas, including "job quality," "productivity," "punctuality," "cost management," "safety," and "completed tailboard forms." In the several months preceding the petition, high-voltage PI-Es have provided information on contractors' performance to the team selecting contractors for future jobs. The record does not indicate that these PI-E comments resulted in a contractor being selected or rejected by the Employer.

PI-Es are classified as a Grade 52 on the Employer's pay scale and earn a base salary of between \$92,000 and \$98,000 a year. They receive straight-time pay for any overtime worked. One PI-E actually earned less during his first year as a PI-E than as a member of the Unit because Unit members receive time and a half for overtime. PI-Es, along with all other frontline and bargaining unit employees of the Employer, are eligible for a maximum bonus level of 10% in the Employer's "gain share" program and may own stock in the Employer and

participate in the Employer's 401(k) plan. PI-Es are reimbursed for travel expenses at the same rate as Unit employees.

Managers, including Levesque and DeWitt, do not receive overtime or straight-time pay for extra hours worked. Managers are eligible for a maximum 15% in the Employer's gain share program. DeWitt is a Grade 55 on the Employer's pay scale and earns a base salary of \$113,500 a year. Levesque is a Grade 53 and earns a base salary of \$112,000. The two managers who directly oversee the PI-Es are John Hart and Martin Simmons, who are both Grade 53. Hart, who is in charge of high-voltage PI-Es, earns a base salary of \$109,500, and Simmons, who is in charge of the low-voltage PI-Es, earns a base salary of approximately \$100,000.

PI-Es must adhere to the Employer's APM and the Transmission and Distribution Construction Standards, but there is no evidence that the PI-Es have had any role in drafting those documents. PI-Es are not involved in formulating the Employer's other policies and do not regularly serve on the Employer's committees that craft policy, either for management or frontline employees. PI-Es are not authorized to act independent of any Employer policies while at a job site.

PI-Es do not participate in the Employer's management meetings or management training courses, and PI-Es do not create formal training programs or create training materials for the Employer or outside contractors. PI-Es are not involved in the Employer's labor relations matters. PI-Es do not participate in making decisions such as whether or where a new substation or facility is to be built or what project the PI-E will inspect. PI-Es have not been informed that they are managers, and they do not hold themselves out as managers of the Employer.

1. High-Voltage PI-Es

The Employer employs approximately 14 PI-Es on the high-voltage side. Because of the size of the projects involved, high-voltage PI-Es often monitor one project at a time. If there are several projects in close proximity, a PI-E may monitor several jobs at once. Depending on the work load, a PI-E on the high-voltage side may occasionally oversee a low-voltage project. A particularly large or complex job may require two or three PI-Es dedicated to that job. High voltage projects include the construction of transmission systems, substations, and overhead line projects and may range in cost from \$2,000 to \$50,000,000.

Construction Projects Manager DeWitt provides overall direction to projects in his department including the planning, developing, siting, permitting, procurement, budgeting, scheduling, and bidding/contracting. Five supervisors report to DeWitt, including John Hart, the Transmission Lines Construction Maintenance Section Leader. Hart supervises the 14 high-voltage PI-Es and conducts their performance appraisals. Two of the PI-Es whom Hart oversees, Tucker and Johnson, perform both PI-E and coordination work. As part of their coordination duties, Tucker and Johnson, together with Hart, determine the job assignments of the other high-voltage PI-Es and inform the PI-Es of their assignments. The parties have stipulated, the record evidence establishes, and I find, that Tucker and Johnson are supervisors

within the meaning of Section 2(11) of the Act and should be excluded from any voting group found appropriate herein.

High-voltage PI-Es are based at the Employer's office in Buckeye, Arizona, but they appear at this office on an irregular basis, generally only for a monthly safety meeting. The PI-Es do not have individual offices or cubicles and generally sit in an open area with a large table and chairs. The PI-Es have access to a computer at the Buckeye office.

High-voltage PI-Es provide regular updates on what is happening on their job sites to, at a minimum, the project manager and the supervisor. The PI-E will telephone, text message, or e-mail the project manager or other supervisor immediately if any problems arise. If changes occur on the job site and the schedule needs to be revised, the PI-E notifies the project manager who will then approve or deny any schedule change.

Although the PI-E job description states that PI-Es "arrange planned outages," the high-voltage PI-Es do not schedule power outages on their own. If an outage is necessary, the PI-E must call the Employer's control center and request an outage. The PI-E also directs switching and grounding orders through the Employer's energy control center, which is the same process followed by employees in the Unit.

When time is not critical and the PI-E identifies the need for a change order that is outside the scope of work and could result in additional cost to the company, the PI-E will first contact his supervisors for approval. For example, a PI-E will seek prior approval when the project requires engineering changes, a different size wire is required, or when additional hours are required for work beyond the scope of the project. While the PI-E's recommendations are usually followed, they are generally reviewed before they are approved. There are occasional situations where a PI-E will notify a supervisor after the fact about a minor change. For example, if plastic conduit was left off the specifications, a PI-E may authorize the addition of the conduit while a trench is open and at a minimal cost. Similarly, the PI-E may determine that the trenching location in the blueprint is not right and authorize the trenching in another location. Even with these minor modifications, the PI-E notifies a supervisor by the end of the day that the change was made. Occasionally a change is so minor that a PI-E will not notify a supervisor at all, such as when metal stairs require a ground.

PI-Es have the authority to shut down a contractor if there is a serious safety problem or environmental issue that requires immediate attention. Unit employees have the same authority. Generally, however, a PI-E must contact a supervisor before a shut down occurs. A high-voltage PI-E did shut down a noisy project for a short time while there was a service taking place at a nearby cemetery. When it became clear this was going to be an ongoing issue with this long-term project, the PI-E contacted his supervisor. The supervisor consulted with the cemetery's attorney and agreed that the cemetery would contact the PI-E as far in advance of a service as possible to arrange for the project to shut down temporarily. In another instance, a PI-E shut down a project when he observed that the project was not going together as designed. The PI-E shut down that aspect of the job and took the problem to the engineer in charge to resolve. Similarly, the record indicates that a PI-E has ordered a contractor's employee to stop work because the employee refused to use a "hot stick" as

required by the APM. In this case, however, the PI-E was following the Employer's standard policy.

The project manager will ask the PI-E to verify information provided by the contractor on an invoice such as material and equipment used or hours worked. When invoice issues arise, a PI-E may ask a contractor about discrepancies between the invoice and what the PI-E observed at the job site. These conversations do not typically involve prices and prices are usually not on the invoices that PI-Es review. The record does not indicate that that high-voltage PI-Es have authority to take action if there are invoice discrepancies other than to question the contractor.

PI-Es may have contact with government officials at the job site. For example, a government inspector may notify a PI-E that the project is creating excess dust or tracking out too much mud. The Employer has a class on dust control that PI-Es and other groups in the company attend. In that class, PI-Es are instructed that if confronted by a government official at a job site, they should contact the appropriate department of the Employer, such as Environmental Services. PI-Es, however, may address an immediate problem that could result in a violation of a government code by, for example, instructing the contractor to put down additional rock to prevent mud track-out.

High-voltage PI-Es are issued credit cards by the Employer to use for expenses such as hotels and meals if they are out-of-town for an extended period of time. Some Unit employees also have company credit cards. PI-Es may make relatively minor purchases on the Employer credit card without prior approval for work-related items such as nuts and bolts or a tire for an Employer vehicle. There is no evidence in the record that PI-Es are authorized to use the Employer's credit card for any larger purchases.

2. Low-Voltage PI-Es

The Employer employs 11 low-voltage PI-Es. Low-voltage projects involve underground and overhead construction and range in cost from \$100 to several million dollars. Jerry Levesque, Manager of System Construction, oversees five different sections that deal with construction, both underground and overhead, and residential services. The 11 PI-Es on the low-voltage side report to John Wilson, Construction Maintenance Coordinator, who reports to Martin Simmons, the Construction Maintenance Section Leader.

Low-voltage PI-Es are based out of the Employer's office in Deer Valley, Arizona, where they meet about three times a month for safety meetings and other issues that arise. There are no cubicles or desks at the Deer Valley location for low voltage PI-Es to use. One low-voltage PI-E uses a cubicle at the Ocotillo Yard in Tempe because it is closer to his job sites.

Low-voltage PI-Es may oversee five or six jobs at a time, depending on the nature of the job. The majority of low-voltage jobs are performed under a fixed rate contract. Approximately 15% of the low-voltage projects require changes. PI-Es normally contact a supervisor if they notice that the project scope as designed or engineered does not fit with the

actual situation on the job site. PI-Es may make relatively minor change orders on the spot without prior approval, and approximately 80% of the changes made by a low-voltage PI-E are minor. For example, a PI-E may authorize changing a small “j box” to a large j box, which cost \$70 apiece, or moving a j box a few feet from where originally planned. To move a j box any greater distance would require prior approval. Also, if a project involves replacing bad service to a house, the PI-E may determine that a neighboring house should have its service replaced as well, and the PI-E could order the extra trenching and conduit work to the second house. Those jobs for trenching and conduit are bid out in two-year contracts and the Employer has a budget for such service replacements. A PI-E may authorize the contractor to run a conduit underneath another utility that was not identified in the plans, or authorize the addition of one or two new poles to a project, which cost approximately \$500 to \$700 apiece. To add more than one or two poles requires prior approval. If it is not feasible to obtain prior authorization for a change order, low-voltage PI-Es have been instructed to submit written change orders within 24 hours. Such a situation may arise, for example, when a crew is digging in a street in the middle of the night and needs to dig deeper than specified in the plans. In that case, the PI-E would submit the change order the next day. Low voltage PI-Es have also shut down a job for 10 or 15 minutes to address problems or immediate safety issues.

PI-Es may arrange with a residential customer for a short-term power outage in order to change out a transformer, but for larger customers, PI-Es must obtain prior approval. When an outage involves one of the Employer’s larger customers, the account or customer service representative is generally the person to contact the customer regarding a planned outage.

Low-voltage PI-Es have responded to inquiries and complaints from the public. For example, a homeowner may contact the PI-E if there is damage to the sidewalk, but it is normally the contractor’s responsibility to correct the problem. If the contractor does not resolve the issue, the PI-E will take such complaints to a superior or the department that handles customer claims. Low voltage PI-Es often oversee projects that require road closures or lane closures for a period of time. The contractor is primarily responsible for arranging with the government when that closure can occur, but the PI-E may also meet with a government official to help arrange the closure. For larger projects involving entities such as Arizona Department of Transportation, the PI-E may turn any issues over to the designated Employer liaison for that agency.

Low-voltage PI-Es verify that invoices are accurate by reviewing the accuracy of materials used or man hours, but they do not review the invoice prices. The PI-E will generally resolve any invoice discrepancies with the contractor but will notify a supervisor if the issue cannot be resolved.

Low-voltage PI-Es do not have discretion to perform their job independent of any of the Employer’s established policies. For example, when a PI-E told a contractor’s lineman to leave the job site because the lineman refused to follow established safety rules, the PI-E did not have the authority to allow that worker to ignore the safety manual.

Low-voltage PI-Es do not have company credit cards. If a PI-E is traveling out of town, he will contact Martin Simmons to use the department credit card. PI-Es use the department credit card for lodging and meals. A PI-E once used the department credit card to purchase tires for an Employer-owned truck.

Low-voltage PI-Es do not create the work schedules for contractors. They do not train any of the Employer's employees or the contractors' employees. They do not formulate any management policies and are not involved in any labor relations matters for the Employer.

D. Legal Analysis and Determination

Managerial employees are persons in executive positions who have authority to formulate, determine, or effectuate employer policies with respect to employee relations matters or whom employees could reasonably believe have such authority. *North Arkansas Elec. Coop.*, 185 NLRB 550 (1970). Managerial employees formulate and effectuate management policies by expressing and making operative the decisions of their employer. Under the tests used by the Board and the courts, managerial employees are those who exercise discretion within, or even independently of, established employer policy and are aligned with management. *NLRB v. Yeshiva Univ.*, 444 U.S. 672 (1980). To be considered a manager, an employee must represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Id.* at 682-683. The party seeking to exclude an individual as a managerial employee has the burden of establishing that exclusion. *Rockspring Dev., Inc. and United Mine Workers of Am.*, 353 NLRB No. 105 slip op. at 4 (Feb. 27, 2009) (citing *Montefiore Hosp. & Med. Ctr.*, 261 NLRB 569, 572 fn. 17 (1982)). In this case, the Employer bears the burden of establishing the PI-Es' managerial status.

The purpose of excluding individuals as managerial personnel rests on the premise that the functions and interest of such individuals are more closely allied with those of management rather than production workers, and they are therefore not "employees" within the meaning of the Act. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). An employee does not acquire managerial status by making some decisions or exercising judgment within established limits set by higher management. In *Case Corp.*, 304 NLRB 939 (1991), for instance, the Board found industrial engineers were not managerial employees, even though they participated in grievance handling and bargaining, where the record failed to show that they had extensive authority to make employer policy.

Managerial employees are "... 'much higher in the managerial structure' than those explicitly mentioned by Congress which 'regarded [them] as so clearly outside the Act that no specific exclusionary provision was found necessary.'" *Yeshiva Univ.*, 444 U.S. at 682. Although the Board has established no firm criteria for determining when an employee is so aligned, normally employees may be excluded as managerial only if they represent management interests by taking or recommending discretionary actions that effectively control or implement employer policy. *Sutter Cmty. Hosp. of Sacramento*, 227 NLRB 181, 193 (1976); *General Dynamics Corp., Convair Aerospace Div.*, 213 NLRB 851, 857 (1974); *Bell Aerospace*, 416 U.S. at 274, 286-289.

An employee's job title does not determine managerial status; rather, it is an employee's actual job responsibilities, authority, and relationship to management that determines the status. *Bell Aerospace*, 416 U.S. at 290 fn.19. Nor do employees acquire managerial status by making decisions or exercising discretion "within established limits." *Holly Sugar Corp.*, 193 NLRB 1024, 1026 (1971). Therefore, employees whose discretion and latitude for independent action take place within the confines of the employer's general directions are not managerial employees. *Bell Aerospace*, 416 U.S. at 288 fn.16.

Based on the record before me, I find that the 23 PI-Es are not managerial employees under the Board's established criteria. In making this determination, I rely on several factors. First, the record lacks any traditional indicia of managerial status for these PI-Es. They do not have regular offices. They have not been told they are managers, and they do not hold themselves out as managers of the Employer. They do not participate in management meetings or management training courses. They do not formulate the Employer's policies or regularly serve on policy-making committees. PI-Es were not involved in creating the manuals they follow—the APM and the Transmission and Distribution Construction Standards Manual—and PI-Es may not act independently of these manuals or the Employer's policies in general.

Second, PI-Es are not involved in labor relations matters for the Employer. The fact that PI-Es may oversee the work of members of a different local of the Petitioner does not indicate managerial status. See *Yeshiva*, 444 U.S. at 686-688 & fn.23 (conflict of interest between groups insufficient to show managerial status); *Bechtel, Inc. and Int'l Bhd. of Teamsters*, 225 NLRB 197,198 (1976) (finding no merit in the employer's contention that "unionization of the inspectors would create a conflict of interest between the performance of their job responsibilities and their loyalty to the union").

Third, most, if not all, of the PI-Es sought to be included in the Unit were once members of the Unit and continue to receive many of the same benefits that Unit members receive, including participation in the Employer's 401(k) plan, a maximum bonus of 10%, and overtime pay (albeit straight time for PI-Es and time and a half for Unit members). Managers, by contrast, do not receive straight time or overtime pay and are entitled to up to a 15% bonus. PI-Es are at a lower pay grade than the other managers identified in the record. Although on occasion certain PI-Es may earn more than a manager when their overtime is added in, that does not appear to be a dispositive factor in determining managerial status.

Fourth, PI-Es are not involved in either planning projects they oversee or contracting for services. They do not typically see the actual contract for their projects and only receive the relevant attachments to the contract such as the scope of work, schedule and blueprints. PI-Es are not responsible for tracking project budgets, and their review of a contractor's invoice is merely to verify that the contractor actually performed the work or used the equipment and materials for which the Employer is being billed. PI-Es do provide some feedback on contractors' performance, but there is no evidence in the record that a PI-E's evaluation or input had any significant impact on potential contractors.

Finally, PI-Es must receive authorization before proceeding with a significant change that will either alter the project schedule or the cost of the project, but there is no set demarcation as to when approval is needed. On the high-voltage side, there is record evidence that PI-Es must go through the chain of command for any changes except for immediate safety or environmental issues. The record demonstrates that, when PI-Es take action at a job site, for example, to mitigate dust or require the use of hot sticks, they are following the Employer's policies or written specifications. Low-voltage PI-Es have been instructed to submit any written change orders within 24 hours if it is not feasible to obtain prior authorization. In any other instance, the PI-E is required to consult with someone higher up before making a change order or shutting down a job.

In a similar fact pattern involving inspectors of a pipeline, the Board found that the inspectors were not managerial employees. See *Bechtel*, 225 NLRB at 198. In *Bechtel*, the inspectors performed their duties using the specification for the construction work being done and they checked to ensure the contractors were performing in accordance with those specifications. These inspectors had arguably more authority than the PI-Es at issue here because the *Bechtel* inspectors had the authority to halt construction until the contractor actually met the specifications. The Board held that, because the inspectors' decision to accept or reject a contractor's work product was predicated upon written specifications, the inspectors' decisions were "primarily technical in nature and limited by preexisting established policy." *Id.* The Board also found that the Employer exercised "a degree of oversight over the inspectors' functions" and that there was "some degree of participation by the section [] supervisors in the issuance of stop work orders." *Id.* Similarly in this case, the Employer's PI-Es are subject to the oversight of supervisors and the Employer has substantial control over the PI-E's work performance. The PI-Es' limited discretion and decisions are within "established limits," *Holly Sugar Corp.*, 193 NLRB at 1026, and within the confines of the employer's general directions. *Bell Aerospace*, 416 U.S. at 288 fn.16.

PI-Es are not like the Accounts Receivable Collection Coordinator (ARCC) in *ITT Grinnell and United Steelworkers of America*, ALF-CIO-CLC, 253 NLRB 584 (1980), cited by the Employer. In that case, the Board found that the ARCC had considerable discretion in granting invoice concessions to customers without needing any approval by higher management. Nor are the PI-Es similar to the field expeditors and senior field expeditors in *ACF Industries, Inc. and International Association of Machinists*, AFL-CIO, 145 NLRB 403 (1963), also cited by the Employer. In that case, the Board found that the field expeditors were managerial employees because they evaluated vendor performance and effectively recommended whether a supplier would be selected or rejected by the employer. The PI-Es in this proceeding have limited input on the contractor evaluations and there is no evidence that a contractor has been selected or rejected because of a PI-E's comments. Therefore, I find that the Employer's 23 PI-Es lack a significant degree of discretion in the performance of their jobs independent of their Employer's established policies. I, therefore, find that PI-Es are not managerial employees.

Accordingly, based upon the foregoing and the stipulations of the parties at the hearing, I shall direct an election in the following voting group:

All full-time and regular part-time Project Inspectors-Electrical employed by the Employer in the State of Arizona, excluding all other employees, managerial employees, guards and supervisors as defined in the Act.

There are approximately 23 employees in the voting group in which the election is being directed.

DIRECTION OF ELECTION

I direct that an election by secret ballot be conducted in the above voting group at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the voting group who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off; and those in military services of the United States Government, but only if they appear in person at the polls. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees in the voting group are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; or if they have engaged in an economic strike for more than 12 months before the election date and have been permanently replaced. All eligible employees shall vote whether they desire to be represented for collective-bargaining purposes by:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION #387, AFL-CIO

or whether they desire to remain unrepresented. If a majority of the valid ballots in the election are cast for the Petitioner, the employees will be taken to have indicated their desire to be included in the existing Unit, currently represented by the Petitioner, and it may bargain for those employees as part of that Unit. If a majority of the valid ballots are cast against representation, the employees will be deemed to have indicated their desire to remain unrepresented.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and

addresses of all the eligible voters shall be filed by the Employer with me, and I shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 28 Office, 2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099, on or before February 5, 2010. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by February 12, 2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,⁴ but may not be filed by facsimile.

Dated at Phoenix, Arizona, this 29th day of January 2010.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director
National Labor Relations Board
Region 28
2600 North Central Avenue, Suite 1800
Phoenix, AZ 85004

⁴ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.